In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1517

JESSE VANCE MEHCIZ, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the District of Arizona, petitioner was convicted of having in his possession 12,000 LSD tablets for purposes of sale, in violation of 21 U.S.C. (Supp. V) 331 (q)(3)(A), 333(b)(1), and 360a(c)(1). He was sentenced to the custody of the Attorney General pursuant to the Youth Corrections Act. A divided court of appeals affirmed (Pet. App. A).

The facts are not in dispute. On September 29, 1969, Special Agent Fluhr of the Bureau of Narcotics and Dangerous Drugs received information from a reliable

informant that a large shipment of LSD would be carried from southern California to Phoenix the next day. The informant described the individual who would be carrying the drugs, gave his first name (Vance), and identified the airline, flight number and arrival time. Fluhr and other federal agents met the flight on September 30. They watched the deplaning passengers until they saw petitioner, who fit the description they had been given. After petitioner had proceeded a short distance past them, Fluhr called "Hey, Vance"; petitioner turned around. He was then placed under arrest and handcuffed. Fluhr seized a small overnight suitcase which petitioner had been carrying and opened it. The LSD tablets were inside.

Petitioner contends that, under *Chimel* v. *California*, 395 U.S. 752, the agents were required to obtain a search warrant before opening the suitcase, since, after petitioner was in custody and handcuffed, there was no threat that he might produce a weapon or destroy evidence in the suitcase. The majority opinion below fully answers this contention. Petitioner's argument appears to depend on the fact that the agents chose to handcuff him. Had they not done so before opening his suitcase, it seems implicit in petitioner's argument that their search would have been justified even under the most literal reading of *Chimel*. We cannot believe that the legality or reasonableness of the agents' conduct in the circumstances of this case turns on whether petitioner was placed under this type of restraint.

In any event, no basic right has been infringed where, as here, it is conceded that there was probable cause for

the arrest and reason to believe that the suitcase contained the contraband drugs. It would unduly burden law enforcement officers, without safeguarding any private rights, to require, on facts such as presented here, a warrant to open a package or suitcase carried by a person properly arrested.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

APRIL 1971.

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